



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2010

Mr. Peter Gruning
Duvall Gruning & Dietz, PLLC
112 North LBJ Drive
San Marcos, Texas 78666

OR2010-10452

Dear Mr. Gruning:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386571.

The Lockhart Police Department (the "department"), which you represent, received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 58.007 of the Family Code provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act] or other law.

Fam. Code § 58.007(c), (e), (j). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). We have reviewed the submitted information and find it involves allegations of juvenile conduct indicating a need for supervision that occurred after September 1, 1997. Thus, the submitted information is subject to section 58.007(c).

You contend that although the requestor is listed as the juvenile's guardian in the submitted report, a court order signed before the request names the Texas Department of Family and Protective Services ("DFPS") as the temporary sole managing conservator of the juvenile in question. We note the order only grants DFPS temporary sole managing conservatorship of the juvenile; it does not terminate the requestor's guardianship. Because we are unable to determine whether the requestor's guardianship rights have been terminated, we must rule conditionally. If the department determines the requestor is not the guardian of the juvenile in question, the department must withhold the submitted report in its entirety under

section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the department determines the requestor is the guardian of the juvenile, then pursuant to section 58.007(e), the department may not withhold the submitted report under section 552.101 in conjunction with section 58.007(c). *See id.* §58.007(e). We note, however, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). In that event, because the submitted report may not be withheld pursuant to section 552.101 in conjunction with section 58.007(c), we will consider your remaining claims under sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Upon review of the submitted information, we find you have failed to demonstrate how any portion of the submitted report was used or developed in an investigation of alleged abuse or neglect under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261). Therefore, we determine section 261.201 is not applicable to the submitted information. Accordingly, the department may not withhold the submitted report under section 552.101 in conjunction with section 261.201.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.*

§ 552.301(e)(1)(A). You state the submitted report pertains to a closed criminal investigation that ended in a result other than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the submitted information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, except for basic information, you may withhold the submitted report under section 552.108(a)(2).

You also raise section 552.101 of the Government Code in conjunction with the common-law right of privacy.¹ Although the basic information contains information that is generally subject to common-law privacy, in the event the department determines the requestor is the guardian of the juvenile whose privacy interests are implicated, she has a right of access to this information. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, none of the basic information may be withheld on the basis of common-law privacy.

In summary, if the department determines the requestor is not the guardian of the juvenile in question, the department must withhold the submitted report under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department determines the requestor is the guardian of the juvenile in question, then except for basic information, the department may withhold the submitted report under section 552.108(a)(2) of the Government Code.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

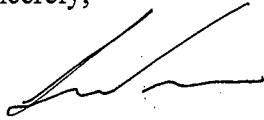
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

¹Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976).

²In such event, the requestor has a right of access to portions of the basic information being released that would otherwise be excepted from release under the Act. Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 386571

Enc. Submitted documents

c: Requestor
(w/o enclosures)